APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN; - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR; DELDOT; CITY COUNCIL FOR THE CITY OF WILMINGTON; CITY PLANNING DEPT; MBNA BANK - *Defendant*

---

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)
District Judge: Honorable Roderick R. McKelvie

Submitted Under Third Circuit LAR 34.1(a)
August 1, 2001

BEFORE: NYGAARD, MCKEE and GREENBERG, circuit judges

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of Delaware. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on June 30, 2000, be, and the same is, hereby affirmed.

Costs taxed against Appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:
s/ Marcia M. Waldron
Clerk:

DATED: August 2, 2001

Certified as true copy and issued in lieu of a formal mandate on November 8, 2001

Teste: s/ Marcia M. Waldron
Clerk, United States Court of
Appeals for the Third Court

APPENDIX B

RECEIVED
JUL 03 2000
OBERLY, JENNINGS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Civil Action No. 99-527-RRM

ROBERT E. BROWN, ET. AL.,
AND MICRO BUSINESS COMMUNITY- - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS,
DELDOT, AND CITY COUNCIL, CITY PLANNING
DEPT., AND MBNA BANK - - - - - - - - - - - *Defendants*

ORDER GRANTING MOTIONS TO DISMISS

This is a civil rights case. Plaintiff Robert E. Brown is a Delaware citizen. Plaintiff Micro Business Community is an organization of Wilmington residents and business owners. Brown is suing on behalf of himself and other members of Micro Business Community. Defendant City of Wilmington is a political subdivision of the State of Delaware. Defendant Jim Sills is the Mayor of the City of Wilmington. Defendants City Council and City Planning Department are governmental bodies of the City of Wilmington (collectively with Sills, "the City"). Defendant Delaware Department of Transportation ("DELDOT") is an agency of the State of Delaware. Defendants MBNA Bank is a Delaware corporation with its principal place of business in Wilmington, Delaware.

On August 13, 1999, plaintiffs filed a complaint in this court pursuant to 28 U.S.C. § 1343, and 42 U.S.C. § 1983, 1985, and 2000a. Plaintiffs allege that defendants, alone or through a conspiracy, repealed a municipal ordinance on

July 8, 1993, which resulted in the elimination of metered parking on several blocks near the intersection of 11th and Walnut Streets in downtown Wilmington ("Downtown Business District"). Plaintiffs contend that defendants arbitrarily and capriciously disregarded plaintiffs' rights guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution. On August 31, 1999, plaintiffs amended the complaint, asserting that defendants violated plaintiffs' constitutional rights by failing to give notice of the change in the City's parking ordinances.

On September 3, 1999, the City moved to dismiss the complaint, arguing that the complaint is barred by the statute of limitations, that the complaint fails to state a claim upon which relief may be granted, and that plaintiffs failed to properly serve the complaint.

On September 7, 1999, MBNA moved to dismiss on the same grounds identified by the City. On September 9, 1999, Brown moved for a default judgment against DELDOT.

This is the court's decision on the pending motions.

I. FACTUAL AND PROCEDURAL BACKGROUND

Prior to 1993, MBNA began planning the construction of its world headquarters in the Downtown Business District. On July 8, 1993, the City enacted Ordinance No. 9711, which deleted Ordinance No. 91-072 entitled "Regulations, parking meters in downtown business district." Plaintiffs allege that deleting Ordinance No. 91-072 negatively affected the parking available in the Downtown Business District.

On October 6, 1998, Brown attended a meeting at the local YMCA held by State Senator Bob Marshall and State Representative Arthur Scott to discuss the parking situation. Brown alleges that he first learned of the change in the City's parking ordinances at this meeting. Brown contends that the legislators stated that defendants had not

done a financial impact study, and had provided no notice to plaintiffs as required by 17 Del. C. 1304(e).[1]

On August 13, 1999, Brown filed the complaint in this court. On the same day, he served summons upon defendants through certified mail. The summons to DELDOT is addressed to "City of Wilmington Department of Transportation. (DelDot)."

On December 14, 1999, the Department of Justice of the State of Delaware filed with the court a copy of a letter addressed to Brown dated December 10, 1999, stating that DELDOT was not properly served with process, and that "[u]nless and until you follow the rules and properly serve my client, we will take no action in this matter."

II. DISCUSSION

A. Did Brown Ineffectively Serve Process upon DELDOT?

Rule 4(j) of the Federal Rules of Civil Procedure provides that service upon state or local governments "shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon such defendant." Rule 4(f)(IV) of the Delaware Superior Court Civil Rules provides that service upon a municipal corporation or other governmental organization shall be effected "by delivering a copy of the

---

[1] 17 Del. Co. § 1304 provides, in pertinent part:

Vacation and abandonment hearing.
(a) In all proceedings in Superior Court, after all interested parties have received notice in accordance with this chapter [entitled "Vacating Public Roads and Bridges"], a hearing shall be held in Superior Court, at which time each party before the court, including the Department, the county in which the right-of-way is located, all abutting land owners or all interested parties, may present relevant evidence regarding the necessity or advisability of the continued use of the road, bridge, or right-of-way for the benefit of the general public or interested parties.

summons, complaint and affidavit, if any, to the chief executive officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant."

Plaintiffs sent DELDOT's summons by certified mail to the "City of Wilmington Department of Transportation (DelDot)." Plaintiffs failed to deliver the summons to a "chief executive officer," such as the Secretary of Transportation or the Attorney General. The court finds that plaintiffs ineffectively served process upon DELDOT, and that the court lacks jurisdiction over DELDOT in light of this deficiency. The court will deny plaintiffs' motion for a default judgment against DELDOT, and will dismiss without prejudice plaintiffs' claims against DELDOT. Plaintiffs may elect to re-serve process upon DELDOT in the manner prescribed by Rule 4(f)(IV) of the Delaware Superior Court Civil Rules.

B. Have Plaintiffs Failed to State a Claim for Relief?

To state a claim under 42 U.S.C. §§ 1983 and 1985, plaintiffs must allege a denial of their constitutional rights. Plaintiffs contend that the elimination of metered parking in the Downtown Business District constitutes a violation of their constitutional rights under the Fifth and Fourteenth Amendments. The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." The Fourteenth Amendment's due process has been interpreted to impose on the states the same obligations imposed by the Fifth Amendment. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

The streets in the Downtown Business District, and the parking meters thereon, are public property. The complaint does not aver any basis to support a finding that plaintiffs have a private property right in the public roadways and parking facilities of the Downtown Business District. The court finds that the complaint fails to state a claim of an improper taking as would be protected by the Fifth and Fourteenth Amendments.

Plaintiffs contend that they had a right to receive notice of the elimination of the parking facilities, pursuant to 17 Del. C § 1304. Section 1304 deals with "Vacating Public Roads and Bridges." Plaintiffs do not aver that a public road was vacated or abandoned. The court finds that 17 Del. C. § 1304 does not require defendants to notify plaintiffs about changes in parking facilities.

Plaintiffs contend, moreover, that defendants violated 42 U.S.C. § 2000a when the downtown parking was eliminated. Section 2000a provides that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." The court finds that nowhere in the complaint do plaintiffs allege that they were denied access to public accommodations on the basis of race, color, religion, or national origin. Thus, plaintiffs fail to state a claim under 42 U.S.C. § 2000a.

III. CONCLUSION

For the reasons discussed above,

IT IS HEREBY ORDERED that:

1. Motion by the City to Dismiss (Docket Item 10) is granted.
2. Motion by MBNA to Dismiss (Docket Item 12) is granted.
3. The complaint is dismissed without prejudice as to DELDOT for ineffective service of process.

s/ Roderick R. McKelvie
United States District Judge

June 30, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2124

BROWN, ET AL.- *Appellant*

v.

WILMINGTON, ET AL. - - - - - - - - - - - - - - - *Defendant*

Robert E. Brown, Appellant
(Delaware District Civil No. 99-cv-00527)

ORDER

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Third Circuit LAR Misc. 107.2.

It is ORDERED that the above-entitled case is hereby dismissed for failure to timely prosecute only as to Micro Business Community. The case will continue as to the appellant, Robert E. Brown.

For the Court,
s/ Marcia M. Waldron
Clerk

Date: August 31, 2000

cc: Robert E. Brown
Micro Business Community
Paulette S. Moore, Esq.
Charles M. Oberly, III, Esq.
Seth J. Reidenberg, Esq.

RECEIVED
SEP 05 2000
OBERLY, JENNINGS

Citation Found Document Rank 1 of 1 Database
28 USCA S 144 USCA
28 U.S.C.A. § 144

APPENDIX C
UNITED STATES CODE ANNOTATED
TITLE 28.
JUDICIARY AND JUDICIAL PROCEDURE
PART I--ORGANIZATION OF COURTS
CHAPTER 5--DISTRICT COURTS

Copr. © West Group 2000. No claim to orig.
U.S. Govt. Works

Current through P.L. 106-274, approved 9-22-2000

§ 144. Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

CREDIT(S)
1993 Main Volume

(June 25, 1948, c. 946, 62 Stat. 898;
May 24, 1949, c. 139, § 65, 63 Stat. 99.)

< General Materials (GM) - References,
Annotations, or Tables >

Copr. © West 2001. No Claim to Orig. U.S. Govt. Works

Citation Found Document Rank 1 of 1 Database
28 USCA S 455 USCA
28 U.S.C.A. § 455

APPENDIX D
UNITED STATES CODE ANNOTATED
TITLE 28.
JUDICIARY AND JUDICIAL PROCEDURE
PART I--ORGANIZATION OF COURTS
CHAPTER 21--GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Copr. © West Group 2000. No claim to orig.
U.S. Govt. Works

Current through P.L. 106-274, approved 9-22-2000

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controver-

sy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interest, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purpose of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

CREDIT(S)

1993 Main Volume

(June 25, 1948, c. 646, 62 Stat. 908; Dec. 5, 1974, Pub.L. 93-512 § 1, 88 Stat. 1609; Nov. 6, 1978, Pub.L. 95-598, Title II, § 214 (a), (b), 92 Stat. 2661; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1007, 102 Stat. 4667)

<General Materials (GM) - References, Annotations, or Tables>

Copr. © West 2001 No Claim to Orig. U.S. Govt. Works

Citation Found Document Rank 1 of 1 Database
42 USCA S 1983 USCA
42 U.S.C.A. § 1983

APPENDIX E
UNITED STATES CODE ANNOTATED
TITLE 42. PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

Copr. © West Group 2000. No claim to orig.
U. S. Govt. Works

Current through P.L. 106-274, approved 9-22-2000

§ 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)
1994 Main Volume

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

2000 Electronic Update

(As amended Pub.L. 104-317, Title III § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

<General Materials (GM) - References, Annotations, or Tables>

Copr. © West 2001 No Claim to Orig. U.S. Govt. Works

Citation Found Document Rank 1 of 1 Database
42 USCA S 1985 USCA
42 U.S.C.A. § 1985

APPENDIX F
UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

Copr. © West Group 2000. No claim to orig.
U.S. Govt. Works
Current through P.L. 106-274, approved 9-22-2000
§ 1985. Conspiracy to interfere with civil rights
(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment

lawfully assented to by him, or of his being or having being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

CREDIT(S)

Copr. © West 2001 No Claim to Orig. U.S. Govt. Works

APPENDIX G

CANON 2

Avoiding Impropriety and the Appearance of Impropriety In All of the Judge's Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

CANON 3

Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

CODE OF JUDICIAL CONDUCT

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently.

Canon 4. A Judge May Conduct the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations.

Canon 5. A Judge Should Refrain From Inappropriate Political Activity.

Canon 6. A Judge Shall Comply with the Code of Judicial Conduct.

Canon 7. Effective Date of Compliance.

Canon 8. Construction and Terminology of the Code.

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1
Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

APPENDIX H

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

APPENDIX I

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

- Next Amendment--Previous Amendment
- Table of Articles and Amendments
- Overview of Full Constitution

APPENDIX J

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
City of Wilmington,
Mayor Jim Sills
800 French St
9th Floor.
Wilmington, De. 19801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of
C. Signature
X
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

A- 3of 3

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merch
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
Z 355 602 258

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-

Z 355 602 258

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	City of Wilmington
Street & Number	800 French St
Post Office, State, & ZIP Code	Wilmington De. 19801
Postage	$ 1.21
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 3.86
Postmark or Date	

PS Form 3800, April 1995

BEST AVAILABLE COPY

APPENDIX J1
UNITED STATES DISTRICT COURT
SUMMONS IN A CIVIL CASE

No. 99-527

ROBERT E. BROWN, ET. AL;
AND
MICRO BUSINESS COMMUNITY - - - - - - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS
AND DELDOT, AND CITY COUNCIL, AND
CITY PLANNING DEPT. AND
MBNA BANK - *Defendants*

TO: (Name and address of defendant)
City of Wilmington
Mayor, Jim Sills
800 French Street
City County Building 9th Floor
Wilmington, Delaware 19801
(302) 571-4100

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Robert E. Brown
1024 Walnut Street
Wilmington, Delaware 19801
(302) 652-9959

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must file your answer with the Clerk of this Court within a reasonable period of time after service.

s/ Peter T. Palleo — Aug. 13, 1999
Clerk — Date

s/ -B Elluhaus
(BY) Deputy Clerk

APPENDIX K

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MBNA Bank
Mr. Charles Cawley, CEO
1100 King St
Wilmington #1 19884
Wilmington, De. [redacted]

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Pls

C – 3 of 3

C. Signature

X

☐ Agent
☐ Addre

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchar
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
Z 355 602 262

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1

FILED
AUG 17 2 15 PM '99
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE

Z 355 602 262

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to MBNA Bank	
Street & Number 1100 King St.	
Post Office, State, & ZIP Code Wilmington, De. 19801	
Postage	$ 1.43
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 4.08
Postmark or Date	AUG 13 CT

PS Form 3800, April 1995

WILMINGTON DE 19801 AUG

APPENDIX K1
UNITED STATES DISTRICT COURT
SUMMONS IN A CIVIL CASE

No. 99-527

ROBERT E. BROWN, ET. AL;
AND
MICRO BUSINESS COMMUNITY- - - - - - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS
AND DELDOT, AND CITY COUNCIL, AND
CITY PLANNING DEPT. AND
MBNA BANK- *Defendants*

TO: (Name and address of defendant)
MBNA Bank
Charles Cawley, C.E.O.
1100 King Street
Wilmington # 1
Wilmington, Delaware 19801
(302) 453-9930

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Robert E. Brown
1024 Walnut Street
Wilmington, Delaware 19801
(302) 652-9959

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must file your answer with the Clerk of this Court within a reasonable period of time after service.

s/	Peter T. Palleo Clerk	Aug. 13, 1999 Date
s/	B Elluhaus (BY) Deputy Clerk	

APPENDIX L

HPS-91 UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1041

IN RE: ROBERT E. BROWN- - - - - - - - - - - - - - *Petitioner*

On Petition for a Writ of Mandamus

(Related to D.Del. Civ. No. 99-cv-00527)
February 26, 2001

OPINION
(Filed March 1, 2001)

Before: CHIEF JUDGE BECKER, WEIS and GARTH, Circuit Judges

PER CURIAM. On January 5, 2001, Robert Brown filed the instant petition for a writ of mandamus. Brown requests: that this Court certify *Brown* v. *City of Wilmington, et al.*, D.Del. Civ. No 99-cv-00527, as a class action; that District Court Judge Roderick R. McKelvie be recused from the case; that this Court vacate the District Court's order dismissing the case; and that the Wilmington Department of Transportation be ordered to respond to the compliant.

The District Court dismissed Brown's complaint on June 30, 1999. Brown has appealed that decision and his appeal is currently pending in this Court. (SEE: C.A. No. 00-2124). "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *United States Dist. Court*, 426 U.S. 394, 402 (1976). Additionally,

"mandamus is not substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction." In re Chambers Development Company, Inc., 148 F.3d 214, 226 (3d Cir. 1998). Brown has made no showing (nor does it appear that he could) that the relief requested in his petition for mandamus cannot be pursued on his appeal. As noted, mandamus is not a substitute or alternative to the normal appellate process. Therefore, we will deny Brown's petition for a writ of mandamus.

UNREPORTED - NOT PRECEDENTIAL

APPENDIX M

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN;
MICRO BUSINESS COMMUNITY* - - - - - - - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR;
DELDOT; CITY COUNCIL FOR THE CITY OF
WILMINGTON; CITY PLANNING DEPT;
MBNA BANK - *Defendants*

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)
District Judge: Honorable Roderick R. McKelvie

Submitted Under Third Circuit LAR 34.1(a)
August 1, 2001

BEFORE: NYGAARD, MCKEE and GREENBERG, circuit judges

(Filed August 2, 2001)

OPINION

PER CURIAM. Robert E. Brown appeals the district court's dismissal of a civil rights case he brought pursuant to 42 U.S.C. §§ 1983, 1985, and 2000a. We will affirm.

Brown's complaint named as defendants the City of Wilmington, its city council, planning department, and mayor; the Delaware Department of Transportation (DELDOT); and MBNA Bank.[1] Brown stated that the defendants had on July 8, 1993, repealed a city ordinance that provided for metered parking on several blocks in the downtown business district in order to provide for the expansion of MBNA Bank. He alleged that the defendants had taken this action covertly and had not provided the affected businesses and landowners with the notice required by DEL. CODE ANN. tit. 17, § 1302(b) and tit. 29, § 10115. He contended that the repeal was unlawful because no financial impact study was conducted pursuant to DEL. CODE ANN. tit. 29 § 1304(e). He argued that the defendants' actions deprived him of statutory rights provided by DEL. CODE ANN. tit. 17, §§ 1306, 1311, and 1313. Brown also complained that the defendants had on September 24, 1998, without giving affected parties the notice required by DEL. CODE ANN. tit. 17, § 1302 and tit. 29, §§ 10115, 10116, and 10122, enacted a new ordinance forbidding parking on several blocks of Walnut Street. Brown contended that the defendants' actions in 1993 and 1998 affected his income and deprived him of due process and equal protection as guaranteed by the federal and state constitutions. Brown subsequently amended his complaint to allege that the City, its mayor, and the city council had violated DEL. CODE ANN. tit. 22, §§ 304 and 305, pertaining to the establishment and alteration of regulations.

All of the defendants but DELDOT filed motions to dismiss. In a letter to Brown that was filed with the court, DELDOT indicated that it believed it had not been properly served because neither the Secretary of Transportation nor the Attorney General had received process from Brown.

---

[1]Another plaintiff in the district court was Micro Business Community. That entity has been dismissed from this appeal.

The district court granted the motions to dismiss. It held that Brown had no viable 42 U.S.C. §§ 1983 and 1985 claims because he had no property right in the streets or parking meters of the downtown business district. The court indicated that DEL. CODE ANN. tit. 17, § 1304, was inapplicable because Brown had not alleged that any public road was vacated or abandoned. The court held that Brown had not stated a claim under 42 U.S.C. § 2000a because he had alleged no discrimination on the basis of race, color, religion, or national origin. As to DELDOT, the court held that Brown had failed to effect service because he had not delivered a copy of the complaint to its chief executive officer. Brown timely appealed.[2]

Brown first argues that the district judge should have recused himself sua sponte under 28 U.S.C. §§ 144 and 455 because he had presided, or was presiding, over another case involving MBNA and the firm representing MBNA. This argument is frivolous. Section 144 is inapplicable because Brown did not file an affidavit with the court stating the reasons that he believed the judge was biased. See *United States* v. *Martorano*, 866 F.2d 62, 67 n.5 (3d Cir. 1989). Under § 455, a judge must recuse if his impartiality might be questioned by a reasonable person. See *id.* at 68. A reasonable person would not question the district judge's participation merely because one of the parties, and its

---

[2]The court dismissed DELDOT without prejudice. A dismissal without prejudice is typically not appealable as a final order under 28 U.S.C. § 1291. See *Bhatla* v. *U.S. Capital Corp.*, 990 F.2d 780, 786 (3d Cir. 1993). However, an order dismissing a complaint without prejudice is appealable if the plaintiff would be unable to cure the defect. *Borelli* v. *City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976). The time for Brown to effect service has now run. See Fed. R. Civ. P. 4(m). Furthermore, the district court's conclusion that Brown's complaint failed to state a claim would apply to DELDOT as well. We have recognized that a plaintiff may finalize a dismissal without prejudice by electing to stand on the dismissal complaint. See *Borelli*, 532 F.2d at 951-92. We understand Brown to be standing on the complaint. For these reasons, we are satisfied that appellate jurisdiction is proper.

attorney, had appeared before him in another case. See, e.g., *Christo* v. *Padgett*, 223 F.3d 1324, 1334 (11th Cir. 2000). Brown points to various rulings as proof that the judge should have recused, but a party's unhappiness with a judge's rulings in a case will not dictate recusal. See *Jones* v. *Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1356 (3d Cir. 1990).[3]

Brown contends that the district court erred in concluding that he had not effectively served DELDOT. Under Fed. R. Civ. P. 4(j), service upon a state or local government must be effected on the "chief executive officer" of the organization or by the manner prescribed by state law. State law also provides for service of the "chief executive officer" of the entity. See Del. R. Super. Ct. 4(f)(IV). Brown concedes that he did not serve DELDOT's chief executive officer. He contends that his service on the *city's* department of transportation should be sufficient to effect service on the state agency, but we cannot say that the district court erred in concluding otherwise.

Brown argues that the district court erred in holding that he failed to state a claim against the other defendants. A federal civil rights action must rest on the violation of some federal, not state, right. See, e.g., *Kulwicki* v. *Dawson*, 969 F.2d 1454, 1468 (3d Cir. 1992) (§ 1983); *Jennings* v. *Shuman*, 567 F.2d 1213, 1221 (3d Cir. 1977) (§ 1985). Accordingly, violations of the Delaware Code or the state constitution are not, in and of themselves, actionable via 42 U.S.C. §§ 1983 or 1985. Brown *did* allege that

---

[3]Brown indicates that he learned of his grounds for recusal only after the district court ruled. At that time, he filed a mandamus petition that requested the recusal of the district judge. We denied the petition. There, Brown stressed that the district judge had once been a partner in a firm that worked as special counsel to Delaware's governor and attorney general. See App. Exh. D, 2-3. Absent a showing that the judge was somehow previously involved in the case, recusal is not mandated. See *United States* v. *DiPasquale*, 864 F.2d 271, 279 (3d Cir. 1988).

the defendants' actions deprived him of his federal rights to due process and equal protection. As the district court indicated, however, Brown cannot make out any due-process violation because he has no property or liberty interest in the public parking or parking meters that were removed. *Sample* v. *Diecks*, 885 F.2d 1099, 1113 (3d Cir. 1989); see also *De Pace* v. *Mayor and Council of Wilmington*, 72 A.2d 439, 440 (Del. 1950) (parking is a privilege and a municipality has the power to enact parking regulations). In addition, Brown has not made out any equal-protection violation because he has not alleged any invidious discrimination or, indeed, any classification scheme at all. See *Price* v. *Cohen*, 715 F.2d 87, 91 (3d Cir. 1983). Brown did not state a claim under § 1983 or § 1985.

Brown argued that a violation of 42 U.S.C. § 2000a had occurred. As the district court held, Brown did not allege any "discrimination or segregation on the ground of race, color, religion, or national origin." Therefore, he did not state a claim under that statute.

We do not understand the district court to have exercised supplemental jurisdiction, see 28 U.S.C. § 1367, over any state-law claims that Brown may have intended to bring. Accordingly, we make clear that the dismissal of any such claims in Brown's petition was without prejudice.

For the foregoing reasons, we will affirm the district court's judgment.

APPENDIX N

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN;
MICRO BUSINESS COMMUNITY* - - - - - - - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR;
DELDOT; CITY COUNCIL FOR THE CITY OF
WILMINGTON; CITY PLANNING DEPT;
MBNA BANK - *Defendants*

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)

SUR PETITION FOR REHEARING

BEFORE: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO, FUENTES, and GREENBERG, Circuit Judges[1]

The petition for rehearing filed the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all other available circuit judges in regular active service, and no judge who concurred in the decision having asked for

[1]Judge Greenberg's vote is limited to panel rehearing only.

rehearing, and a majority of the circuit judges in regular active service not having voted for rehearing by this court en banc, the Petition for Rehearing is hereby DENIED.

It is so ordered.

Costs taxed against Appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:
s/ Marcia M. Waldron
Clerk

DATED: August 2, 2001